IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 581 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VOHRA GULAMNABI MOHAMMEDFAZAL & 2 - Petitioner(s)

Versus

ZALA CHAHERSANG MOTISANG & 17 - Respondent(s)

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Appearance :
NOTICE SERVED for Petitioner(s) : 1 - 2,2.2.2 UNSERVED-EXPIRED (N) for Petitioner(s) : 3,
UNSERVED-EXPIRED (R) for Respondent(s) : 1,
None for Respondent(s) : 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5,2.2.6 - 4, 4.2.2, 4.2.3, 4.2.4,4.2.5 - 5, 5.2.2, 5.2.3,5.2.4 - 7, 7.2.1, 7.2.2, 7.2.3, 7.2.4, 7.2.5,7.2.6 - 10, 10.2.2, 10.2.3,10.2.4 - 12, 12.2.2, 12.2.3, 12.2.4,12.2.5 - 13, 13.2.2, 13.2.3, 13.3.2, 13.3.3,13.3.4 - 14, 14.2.2,14.2.3 - 17,17.3.2 - 18.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/10/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality

and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 28-7-89 passed in TEN.B.A.1793/83 as well as the order passed by the Gujarat Revenue Tribunal dated 11-1-91 passed in TEN.C.A.58/89 in dismissing the same and confirming the order passed by the Deputy Collector, Himmatnagar dated 7-12-83 passed in TNC Appeal No.15/83 in dismissing the same and confirming the order passed by the Mamlatdar & ALT, Himmatnagar dated 21-9-83 passed in Tenancy Case No.70-B/101/81 in not declaring the petitioners as tenants of the land in question under the provision of Bombay Tenancy Act.

2. The present proceedings under the Bombay Tenancy Act arose pursuant to the reference made by the learned Civil Judge (JD), Prantij with respect to the land bearing survey no.3 paiki admeasuring 24 Acre 28 Guntha situated at village Ghogha – Vasana, Tal: Prantij, Dist: Sabarkantha. The petitioners have filed a civil suit being Regular Civil Suit No.111 of 1976 in the court of learned Civil Judge (JD), Prantij with respect to the land bearing survey no.3 paiki admeasuring 24 Acre 28 Guntha and an application for interim injunction was also submitted by the petitioners. The question arose with regard to the tenancy and

therefore, the learned Civil Judge (JD), Prantij referred the issue with regard to the tenancy to the Mamlatdar and ALT, Himmatnagar under Section 85-A of the Bombay Tenancy Act. As the matter was already decided by the Mamlatdar and ALT in Case No.50-7-32G/76 on 26-2-1979, the Mamlatdar & ALT vide its order dated 22-9-1980 held that no further inquiry is necessary. The said order dated 22-9-1980 came to be challenged by the respondents before the Deputy Collector, Himmatnagar and the Deputy Collector by its order dated 25-9-1981 passed in TNC/Appeal/11/1981 directing the Mamlatdar and ALT, Himmatnagar to reply to the specific reference made by the learned Civil Court after examining the witnesses of both the sides and after hearing the parties. That thereafter, Mamlatdar and ALT on appreciation of evidence documentary as well as oral, by its judgment and order dated 21-9-1983 declared that the petitioners are not the tenants of the land in question. Being aggrieved by and dissatisfied with the judgment and order passed by the Mamlatdar & ALT dated 21-9-1983 passed in Case No.70-B/101/81, petitioners preferred appeal before the Deputy Collector, Himmatnagar and the Deputy Collector, Himmatnagar by its judgment and order dated 7-12-1983

dismissing the said appeal confirming the order passed by the Mamlatdar and ALT dated 21-9-1983. Being aggrieved by and dissatisfied with the same, petitioners preferred Revision Application before the Gujarat Revenue Tribunal being Revision Application No.TEN.B.A.1793/83 and the Gujarat Revenue Tribunal also by its judgment and order dated 28-7-89 dismissed the said Revision Application, confirming the order passed by both the authorities below. That thereafter, petitioners preferred Review Application being Review Application No.TEN.C.A.58/89 before the Gujarat Revenue Tribunal and the said Review Application came to be dismissed by the Gujarat Revenue Tribunal by its judgment and order dated 11-1-1991. The petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India challenging the aforesaid two judgments and orders passed by the Gujarat Revenue Tribunal.

3. Though served, nobody appears on behalf of the petitioners. As stated above, the proceedings were initiated by the Mamlatdar & ALT on the reference being made by the learned Civil Court. On appreciation of evidence, the Mamlatdar & ALT held that in early proceedings, the petitioners had clearly admitted that

they are not the tenants of the land in question and therefore, it is held by the Mamlatdar & ALT that the petitioners have failed to prove that they are the tenants of the land in question. The aforesaid order came to be confirmed by the Deputy Collector and thereafter by the Gujarat Revenue Tribunal.

4. The concurrent findings of the fact recorded by all the three authorities below to the effect that the petitioners had failed to prove that they are the tenants of the land in question. The petitioners have raised the same contention, which are raised before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal in its aforesaid judgment and order dated 28-7-89 has elaborately dealt with and considered the same and thereafter has dismissed the Revision Application.

5. This is a petition under Article 227 of the Constitution of India and this court is not required to re-appreciate the evidence on record. There is no jurisdictional error much less an error committed by Gujarat Revenue Tribunal. On the contrary, it appears from the orders that in earlier proceedings, the petitioners had clearly admitted that they are not the tenants of the land in question. Considering the aforesaid, Mamlatdar & ALT held that the petitioners

have failed to prove that they are the tenants of the land in question, therefore, no interference requires at the hands of this court in exercise of powers under Article 227 of the Constitution of India.

6. For the reasons as stated above, petition fails. Rule is discharged. Interim Relief if any, stands vacated forthwith. However, no order as to costs.

(M.R.SHAH,J)

Shekhar/-